

ESTTA Tracking number: **ESTTA152525**

Filing date: **07/23/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following parties request to cancel indicated registration.

### Petitioner Information

Name	Starbucks Corporation d/b/a Starbucks Coffee Company		
Entity	Corporation	Citizenship	Washington
Address	2401 Utah Avenue South Seattle, WA 98134 UNITED STATES		

Name	Starbucks U.S. Brands, LLC		
Entity	Limited Liability Company	Citizenship	Nevada
Address	2525 Starbucks Way Minden, NV 89423 UNITED STATES		

Attorney information	Julia Anne Matheson Finnegan, Henderson, Farabow, Garrett and Dunner, LLP 901 New York Avenue, N.W. Washington, DC 20001 UNITED STATES docketing@finnegan.com, andrew.pittman@finnegan.com, julia.matheson@finnegan.com Phone:202.408.4020		
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### Registration Subject to Cancellation

Registration No	2598291	Registration date	07/23/2002
Registrant	EARS 2 HEAR MUSIC, INC. 17011 HILTON SOUTHFIELD, MI 48075 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 009. First Use: 1998/11/23 First Use In Commerce: 1998/11/23  
All goods and services in the class are cancelled, namely: musical sound recordings recorded on compact discs and audio cassette tapes

### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2917028	Application Date	11/17/2003
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Registration Date	01/11/2005	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1992/12/31 First Use In Commerce: 1992/12/31 Pre-recorded compact discs featuring classical, jazz, contemporary, pop, seasonal music, Rhythm and Blues, soul, world, zydeco, reggae, rock, folk, and show tunes music; mouse pads</p> <p>Class 035. First use: First Use: 1992/12/31 First Use In Commerce: 1992/12/31 Retail music and record stores; retail outlets featuring audio and video records, tapes and CDs and books, videos and magazines in the field of music; electronic and mail order catalog services featuring audio and video records, tapes and CDs and books, videos and magazines in the field of music; promoting musical exhibitions and live music concerts of others through the distribution of printed and audio promotional materials</p> <p>Class 041. First use: First Use: 1992/12/31 First Use In Commerce: 1992/12/31 Entertainment services, namely organizing and conducting musical exhibitions and live music concerts</p>		

U.S. Registration No.	3131140	Application Date	02/15/2005
Registration Date	08/15/2006	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 043. First use: First Use: 2004/03/16 First Use In Commerce: 2004/03/16 Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house services; carry out restaurant services; preparation of carry out foods and beverages</p>		

U.S. Application No.	76607742	Application Date	08/19/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: Computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio data; audio recordings, featuring classical, jazz, contemporary, pop, seasonal, R and B, soul, zydeco, reggae, rock, folk and show tunes music; digital audio players; downloadable music via a global computer network and wireless devices</p> <p>Class 038. First use: Communication services, namely, transmitting streamed and downloadable audio and video entertainment programming via computer, satellite and communications networks; audio entertainment broadcasting and transmission;</p>		

	<p>subscription audio and video entertainment broadcasting and transmission via computer, satellite and communications networks; electronic and digital transmission of voice, data, information, images, signals and messages; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; providing multiple user dial-up and dedicated access to the Internet</p> <p>Class 041. First use:</p> <p>Providing access to an interactive computer database featuring a comprehensive digest of musical recordings; providing databases and directories in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; Providing in store and on-line facilities to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events and entertainment-related programs; production and distribution of radio programs; music production services; entertainment services, namely providing reviews of music and commentary and articles about music</p>
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U.S. Application No.	76607743	Application Date	08/19/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use:</p> <p>Computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio data; audio recordings, featuring classical, jazz, contemporary, pop, seasonal, R and B, soul, world zydeco, reggae, rock, folk and show tunes music; digital audio players; downloadable music via a global computer network and wireless devices</p> <p>Class 038. First use:</p> <p>Communication services, namely, transmitting streamed and downloadable audio and video entertainment programming via computer, satellite and communications networks; audio entertainment broadcasting and transmission; subscription audio and video entertainment broadcasting and transmission via computer, satellite and communications networks; electronic and digital transmission of voice, data, information, images, signals and messages; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; providing multiple user dial-up and dedicated access to the Internet</p> <p>Class 041. First use:</p>		

	Providing access to an interactive computer database featuring a comprehensive digest of musical recordings; providing databases and directories in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; Providing in store and on-line facilities to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events and entertainment-related programs; production and distribution of radio programs; music production services; entertainment services, namely providing reviews of music and commentary and articles about music
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U.S. Application No.	78567807	Application Date	02/15/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: Providing search engines for obtaining data via communications networks; providing search engines for obtaining data on a global computer network; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, movies, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; Internet services, namely, creating indexes of information, sites, and other resources available on global computer networks for others; searching, browsing, and retrieving information, sites, and other resources on global computer networks for others; Providing sound and music listening equipment in retail stores for customers to preview compact discs, tapes, DVD's, DVR's, and other media prior to purchase		

U.S. Application No.	78567835	Application Date	02/15/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	The mark consists of the words HEAR MUSIC with a curved line through the middle of the word HEAR.		
Goods/Services	Class 035. First use: Retail music and record stores; retail outlets and on-line retail store services featuring audio and video records, tapes and CDs; and books, videos and magazines in the field of music; electronic and mail order catalog services featuring audio and video records, tapes and CDs; and books, videos and magazines in the field of music; promoting musical exhibitions and live music concerts of others through the distribution of printed and audio promotional materials		

U.S. Application No.	78567850	Application Date	02/15/2005
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	The mark consists of the words HEAR MUSIC with a curved line through the middle of the word HEAR.		
Goods/Services	<p>Class 035. First use:  Providing sound and music listening equipment in retail stores for customers to preview compact discs, tapes, DVD's, DVR's and other media prior to the purchase</p> <p>Class 042. First use:  Providing search engines for obtaining data via communications networks; providing search engines for obtaining data on a global computer network; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, movies, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; Internet services, namely, creating indexes of information, sites, and other resources available on global computer networks for others; providing information at the specific request of end users by searching, browsing, and retrieving information, sites, and other resources on global computer networks for others</p>		

U.S. Application No.	78567863	Application Date	02/15/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEAR MUSIC		
Design Mark			
Description of Mark	The mark consists of the words HEAR MUSIC with a curved line through the middle of the word HEAR.		
Goods/Services	<p>Class 043. First use:  Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house services; carry out restaurant services; preparation of carry out foods and beverages</p>		

Attachments	76560494#TMSN.gif ( 1 page )( bytes ) 78567822#TMSN.jpeg ( 1 page )( bytes ) 76607742#TMSN.gif ( 1 page )( bytes ) 76607743#TMSN.gif ( 1 page )( bytes ) 78567807#TMSN.jpeg ( 1 page )( bytes ) 78567835#TMSN.gif ( 1 page )( bytes ) 78567850#TMSN.gif ( 1 page )( bytes ) 78567863#TMSN.gif ( 1 page )( bytes ) 0003099.PDF ( 8 pages )(486182 bytes )
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Signature	/Julia Anne Matheson/
Name	Julia Anne Matheson
Date	07/23/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STARBUCKS U.S. BRANDS, LLC and	)	
STARBUCKS CORPORATION DBA	)	
STARBUCKS COFFEE COMPANY,	)	
	)	
Petitioners,	)	Cancellation No. _____
	)	
v.	)	Mark: EARS 2 HEAR MUSIC &
	)	Design
EARS 2 HEAR MUSIC, INC,	)	Reg. No. 2598291
	)	Issued: July 23, 2002
Registrant.	)	
	)	
	)	

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**PETITION FOR CANCELLATION**

Starbucks U.S. Brands, LLC, a limited liability company of the State of Nevada, having a principal place of business at 2525 Starbucks Way, Minden, Nevada 89423, and Starbucks Corporation d/b/a Starbucks Coffee Company, a corporation of the State of Washington, having a principal place of business at 2401 Utah Avenue South, Seattle, Washington 98134 (collectively referred to as "Starbucks"), believes that it is being, and will be damaged by the registration of the Ears 2 Hear Music, Inc.'s ("Registrant") mark EARS 2 HEAR MUSIC & Design shown in Registration No. 2,598,291 and hereby petitions to cancel the same. As grounds for the cancellation, Starbucks alleges that, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters:

**Starbucks and Its HEAR MUSIC Mark**

1. Since 1992, Starbucks, through its predecessor in interest, has organized and conducted musical exhibitions and live music concerts, operated retail music and

record stores, promoted musical exhibitions and live music concerts, and created and sold unique compilations of music in many different genres under the name and mark HEAR MUSIC. With a current catalog of 175 CD compilations, HEAR MUSIC handpicks songs from new and classic records to create CDs that help people discover music they might not otherwise hear.

2. HEAR MUSIC musical compilations enhance the Starbucks coffeehouse audio experience at Starbucks cafes throughout the country. Since at least as early as 2000, HEAR MUSIC compact discs have been available for purchase at Starbucks' retail locations nationwide. Today, HEAR MUSIC compilations are available through traditional retail music channels (i.e., Tower Records, Barnes & Noble, Best Buy, Amazon.com, and others), as well as through Starbucks more than 9,800 stores in North America alone.

3. Total revenues for HEAR MUSIC compilations have been substantial, amounting to at least \$93,000,000 since September 2004, and representing sales of at least 6,000,000 HEAR MUSIC CDs.

4. In March 2007, Starbucks together with Concord Music Group launched a new HEAR MUSIC record label. The company's first artist signing was former Beatle Paul McCartney. Paul McCartney's album "Memory Almost Full" debuted at #3 on the Billboard Top 200 chart in June 2007.


5. In addition to its common law rights in the HEAR MUSIC mark, Starbucks is the owner of the following valid and subsisting United States trademark registrations for the HEAR MUSIC mark:



<b>Mark</b>	<b>Reg. No. Reg. Date</b>	<b>Date of First Use Date of First Use in Commerce</b>	<b>Goods/Services</b>
HEAR MUSIC	2917028 Jan. 11, 2005	Dec. 31, 1992 Dec. 31, 1992	<p>Pre-recorded compact discs featuring classical, jazz, contemporary, pop, seasonal music, Rhythm and Blues, soul, world, zydeco, reggae, rock, folk, and show tunes music; mouse pads in Class 9</p> <p>Retail music and record stores; retail outlets featuring audio and video records, tapes and CDs and books, videos and magazines in the field of music; electronic and mail order catalog services featuring audio and video records, tapes and CDs and books, videos and magazines in the field of music; promoting musical exhibitions and live music concerts of others through the distribution of printed and audio promotional materials in Class 35</p> <p>Entertainment services, namely organizing and conducting musical exhibitions and live music concerts in Class 41</p>
HEAR MUSIC	3131140 Aug. 15, 2006	March 16, 2004 March 16, 2004	<p>Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house services; carry out restaurant services; preparation of carry out foods and beverages in Class 43</p>


6. Starbucks is also the owner of the following pending United States trademark applications for the HEAR MUSIC mark:



Mark	Application Serial No. Filing Date	Goods/Services
HEAR MUSIC	76607742 Aug. 19, 2004	<p>Computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio data; audio recordings, featuring classical, jazz, contemporary, pop, seasonal, R and B, soul, zydeco, reggae, rock, folk and show tunes music; digital audio players; downloadable music via a global computer network and wireless devices in Class 9</p> <p>Communication services, namely, transmitting streamed and downloadable audio and video entertainment programming via computer, satellite and communications networks; audio entertainment broadcasting and transmission; subscription audio and video entertainment broadcasting and transmission via computer, satellite and communications networks; electronic and digital transmission of voice, data, information, images, signals and messages; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; providing multiple user dial-up and dedicated access to the Internet in Class 41</p> <p>Providing access to an interactive computer database featuring a comprehensive digest of musical recordings; providing databases and directories in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; Providing in store and on-line facilities to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events and entertainment-related programs; production and distribution of radio programs; music production services; entertainment services, namely providing reviews</p>

Mark	Application Serial No. Filing Date	Goods/Services
		of music and commentary and articles about music in Class 41
	76607743 Aug. 19, 2004	<p>Computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio data; audio recordings, featuring classical, jazz, contemporary, pop, seasonal, R and B, soul, world Zydeco, reggae, rock, folk and show tunes music; digital audio players; downloadable music via a global computer network and wireless devices in Class 9</p> <p>Communication services, namely, transmitting streamed and downloadable audio and video entertainment programming via computer, satellite and communications networks; audio entertainment broadcasting and transmission; subscription audio and video entertainment broadcasting and transmission via computer, satellite and communications networks; electronic and digital transmission of voice, data, information, images, signals and messages; providing on-line chat rooms, bulletin boards and community forums for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; providing multiple user dial-up and dedicated access to the Internet in Class 38</p> <p>Providing access to an interactive computer database featuring a comprehensive digest of musical recordings; providing databases and directories in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; providing information, audio, video, graphics, text and other multimedia content in the fields of music, video, radio, television, news, sports, games, cultural events, entertainment, and arts and leisure via communications networks; music publishing services; publishing of text, graphic, audio and video works via communications networks; Providing in store and on-line facilities to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events and entertainment-related programs; production and distribution of radio</p>

Mark	Application Serial No. Filing Date	Goods/Services
		programs; music production services; entertainment services, namely providing reviews of music and commentary and articles about music in Class 41
HEAR MUSIC	78567807 Feb. 15, 2005	Providing search engines for obtaining data via communications networks; providing search engines for obtaining data on a global computer network; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, movies, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; Internet services, namely, creating indexes of information, sites, and other resources available on global computer networks for others; searching, browsing, and retrieving information, sites, and other resources on global computer networks for others; Providing sound and music listening equipment in retail stores for customers to preview compact discs, tapes, DVD's, DVR's, and other media prior to purchase in Class 42
	78567835 Feb. 15, 2005	Retail music and record stores; retail outlets and on-line retail store services featuring audio and video records, tapes and CDs; and books, videos and magazines in the field of music; electronic and mail order catalog services featuring audio and video records, tapes and CDs; and books, videos and magazines in the field of music; promoting musical exhibitions and live music concerts of others through the distribution of printed and audio promotional materials in Class 35
	78567850 Feb. 15, 2005	<p>Providing search engines for obtaining data via communications networks; providing search engines for obtaining data on a global computer network; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, movies, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; Internet services, namely, creating indexes of information, sites, and other resources available on global computer networks for others; providing information at the specific request of end users by searching, browsing, and retrieving information, sites, and other resources on global computer networks for others in Class 42</p> <p>Providing sound and music listening equipment in retail stores for customers to preview compact discs, tapes, DVD's, DVR's and other media prior to the purchase in Class 35</p>

Mark	Application Serial No. Filing Date	Goods/Services
	78567863 Feb. 15, 2005	Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house services; carry out restaurant services; preparation of carry out foods and beverages in Class 43

7. Starbucks, through its predecessor in interest, has continuously used the HEAR MUSIC mark in commerce since at least as early as December 31, 1992, long prior to Registrant's July 28, 1998 filing date; prior to Registrant's November 23, 1998 first use date; and prior to the July 23, 2002 issuance date of Registration No. 2598291.

8. As a result of Starbucks' extensive sales, promotion, advertising, and commercial success of the HEAR MUSIC brand, Starbucks' HEAR MUSIC mark has achieved such widespread public recognition that it has become famous.

**Registrant and its EARS 2 HEAR MUSIC & Design Mark**

9. Upon information and belief, Registrant Ears 2 Hear Music, Inc. is a corporation of Michigan having an address of 17011 Hilton, Southfield, Michigan 48075.

10. On or about July 28, 1998, Registrant filed Application Serial No. 75526761 to register the mark EARS 2 HEAR MUSIC & Design ("Registrant's Mark") for "musical sound recordings recorded on compact discs and audio cassette tapes" in Class 9 under Section 1(a), 15 U.S.C. § 1051(a), claiming a date of first use of November 23, 1998. Application Serial No. 75526761 matured to Registration No. 2698291 on July 23, 2002.

### LIKELIHOOD OF CONFUSION

11. Starbucks repeats and realleges each and every allegation set forth in paragraphs 1 through 10.

12. In view of the substantial similarity of the parties' marks and the closely-related nature of the parties' goods and services, Registrant's EARS 2 HEAR MUSIC & Design mark so resembles Starbucks' previously used mark and name HEAR MUSIC as to be likely to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d).

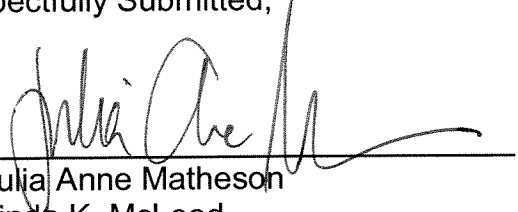
WHEREFORE, Starbucks believes that it is being, and will continue to be damaged by the mark EARS 2 HEAR MUSIC & Design shown in Registration No. 2598291, and requests that the Petition for Cancellation be sustained, and that the registration be cancelled.

A filing fee of \$300 has been submitted electronically. Any deficiency in the fee should be charged to our Deposit Account No. 06-0916.

Respectfully Submitted,

Dated: July 23, 2007

By:

  
Julia Anne Matheson  
Linda K. McLeod  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
901 New York Avenue, NW  
Washington, DC 20001-4413  
Telephone: (202) 408-4000  
Facsimile: (202) 408-4400

Attorneys for Petitioners

STARBUCKS U.S. BRANDS, LLC and  
STARBUCKS CORPORATION DBA  
STARBUCKS COFFEE COMPANY